

Letters Patent 6,025,538 issued February 15, 2000 as Figures 10, 11, 12 and 13. The '538 patent is the parent of the present '166 application and the '166 application carried over Figure 13 of the '538 patent in its entirety as can be seen by a comparison of the '166 application and the '538 patent. As seen in the attached 37 C.F.R. 1.131 Declaration and exhibits thereto, the present inventor has sworn behind the filing date of the '125 patent. A 1.131 Declaration can be used where the reference, a U.S. Patent, such as the '125 patent, with a patent date less than one year prior to applicant's effective filing date, shows but does not claim the same patentable invention. MPEP 715 As can be seen in the claims of the '125 patent attached as an Exhibit A to the Yaccarino Declaration, the same patentable invention is not claimed. Thus, the subject matter relied upon by the Examiner namely the drawings and description of same in the '125 patent rejecting the present application is not a valid reference. The other figures of the '125 patent and descriptions of same do not obviate the present invention.

United States Patent Number 5,968,047 to Reed discloses a number of bone screws, pins, anchors and plates fabricated from bone tissue. There is no teaching of the fasteners in this reference using a fastener to hold two or more bone members together to form a compound bond device for implantation into a surgical site to support an anatomical load applied to the device during a post operative period. Indeed, Reed '047 is used at a fracture site to screw bone pieces together or a plate to a bone fracture area. There is no teaching of a load bearing device. Thus, Reed '047 does not obviate the invention as presently claimed.

An Extension of Time for two (2) months together with fee and a Notice of Appeal together with fee has also been filed with this Response.

It is respectfully requested that the arguments and declaration place the application in condition for favorable reexamination and that the application be passed to issue.

Respectfully submitted,

GIPPLE & HALE



John S. Hale  
Registration No. 25,209

6665-A Old Dominion Drive  
McLean, Virginia 22101  
(703) 448-1770 ext. 304  
Attorney Reference: X-9304